

244105

STATE OF SOUTH CAROLINA

(Caption of Case)

Application of Condor Environmental,
LLC for Approval of Agreement
With Ascot of Greenville Homeowners
Association, Inc. and Metropolitan
Sewer Subdistrict

BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

COVER SHEET

2000-71-5

DOCKET
NUMBER: 2013 - - S

(Please type or print)

Submitted by: Daniel Trammel

SC Bar Number: 74252

Telephone: 864-469-9715

Address: P.O. Box 462

Fax: 864-469-9715

Greer, SC 29652

Other:

Email: recycleh2o@condorencvironmental.org

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

DOCKETING INFORMATION (Check all that apply)

☐ Emergency Relief demanded in petition

☐ Request for item to be placed on Commission's Agenda expeditiously

☐ Other:

INDUSTRY (Check one)

- ☐ Electric
☐ Electric/Gas
☐ Electric/Telecommunications
☐ Electric/Water
☐ Electric/Water/Telecom.
☐ Electric/Water Sewer
☐ Gas
☐ Railroad
☒ Sewer
☐ Telecommunications
☐ Transportation
☐ Water
☐ Water/Sewer
☐ Administrative Matter
☐ Other:

NATURE OF ACTION (Check all that apply)

- | | | |
|--|--|--|
| <input type="checkbox"/> Affidavit | <input type="checkbox"/> Letter | <input type="checkbox"/> Request |
| <input type="checkbox"/> Agreement | <input type="checkbox"/> Memorandum | <input type="checkbox"/> Request for Certification |
| <input type="checkbox"/> Answer | <input type="checkbox"/> Motion | <input type="checkbox"/> Request for Investigation |
| <input type="checkbox"/> Appellate Review | <input type="checkbox"/> Objection | <input type="checkbox"/> Resale Agreement |
| <input checked="" type="checkbox"/> Application | <input type="checkbox"/> Petition | <input type="checkbox"/> Resale Amendment |
| <input type="checkbox"/> Brief | <input type="checkbox"/> Petition for Reconsideration | <input type="checkbox"/> Reservation Letter |
| <input type="checkbox"/> Certificate | <input type="checkbox"/> Petition for Rulemaking | <input type="checkbox"/> Response |
| <input type="checkbox"/> Comments | <input type="checkbox"/> Petition for Rule to Show Cause | <input type="checkbox"/> Response to Discovery |
| <input type="checkbox"/> Complaint | <input type="checkbox"/> Petition to Intervene | <input type="checkbox"/> Return to Petition |
| <input type="checkbox"/> Consent Order | <input type="checkbox"/> Petition to Intervene Out of Time | <input type="checkbox"/> Stipulation |
| <input type="checkbox"/> Discovery | <input type="checkbox"/> Prefiled Testimony | <input type="checkbox"/> Subpoena |
| <input type="checkbox"/> Exhibit | <input type="checkbox"/> Promotion | <input type="checkbox"/> Tariff |
| <input type="checkbox"/> Expedited Consideration | <input type="checkbox"/> Proposed Order | <input type="checkbox"/> Other: |
| <input type="checkbox"/> Interconnection Agreement | <input type="checkbox"/> Protest | |
| <input type="checkbox"/> Interconnection Amendment | <input type="checkbox"/> Publisher's Affidavit | |
| <input type="checkbox"/> Late-Filed Exhibit | <input type="checkbox"/> Report | |

Print Form

Reset Form

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MAY 15 2013

PSC SC
MAIL/DMS



Condor Environmental, LLC
PO Box 462 • Greer, SC 29652
864-469-9715

May 8, 2013

The Honorable Jocelyn D. Boyd
Chief Clerk/Administrator
Public Service Commission of South Carolina
101 Executive Center Drive
Columbia, SC 29210

RE: Application of Condor Environmental, LLC for Approval of Agreement with Ascot of
Greenville Homeowners Association, Inc. and Metropolitan Sewer Subdistrict

Dear Ms. Boyd:

Enclosed for filing are the original and one (1) copy of Application of Condor Environmental, LLC in the above referenced matter. I would appreciate your acknowledging receipt of this document by date-stamping the extra copy of this letter that is enclosed and returning it to me via first class mail.

By copy of this letter, I am serving the Office of Regulatory Staff and enclose a certificate to that effect. If you have any questions or need additional information, please do not hesitate to contact me.

Sincerely,

Daniel Trammel
Condor Environmental

Enclosure

cc: Dukes Scott, Executive Director, ORS

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2013-_____-S

IN RE:)	
Application of Condor Environmental,)	
LLC for Approval of Agreement)	
With Ascot of Greenville Homeowners)	APPLICATION
Association, Inc. and Metropolitan)	
Sewer Subdistrict)	
_____)	

Condor Environmental, LLC (“Applicant” or “Company”), pursuant to S.C. Code Ann. § 58-5-210 (1976) and 26 S.C. Code Ann. Regs. 103-501 (1976) and 103-541 (Supp. 2011) hereby applies for approval of a Pump Station and Force Main Agreement by and among Applicant, Ascot of Greenville Homeowners Association, Inc. (“Ascot HOA”) and Metropolitan Sewer Subdistrict (“MSS”). In support of this Application, Applicant would respectfully show as follows:

1. Applicant is a limited liability company organized and existing under the laws of the State of South Carolina.
2. Applicant is a public utility, as defined by S.C. Code Ann. § 58-5-10(4), currently authorized to operate wastewater systems under the jurisdiction of the Public Service Commission of South Carolina (the “Commission”) in Greenville County and Anderson County. Applicant’s corporate charter is presently on file with the Commission, and an appropriate bond has been posted.
3. In 1999, Condor Environmental, Inc. entered into a Pump Station Agreement with the Ascot Homeowners Association, Inc., Pulte Homes of South Carolina, Inc., and Metropolitan Sewer Authority. The Agreement and a schedule of rates and charges for Applicant’s sewer service was approved by the Commission in Docket No. 2000-71-S, Order No. 2000-651, dated August 10, 2000.
4. Condor Environmental, Inc. submitted an application to the Commission requesting approval to transfer its assets to its sister company Condor Environmental, LLC. The Transfer of

assets from Condor Environmental, Inc. to Condor Environmental, LLC was approved by the Commission in Docket No. 2000-71-S, Order No. 2008-272, dated April 15, 2008.

5. A new schedule of rates and charges for Applicant's sewer service was approved by the Commission in Docket No. 2010-262-WS, Order No. 2011-364, dated May 24, 2011.

6. Due to the original Pump Station Agreement's failure to address certain liability concerns, the Ascot HOA requested from Applicant a new Agreement be drafted to resolve some vagueness in the terms of the original agreement and address some issues encountered over the past 12 years.

7. The Applicant, Ascot HOA, and MSS have entered into a new Pump Station and Force Main Agreement dated September 19, 2012, a copy of which is hereto and incorporated herein by reference as Exhibit "A."

WHEREFORE, having fully set forth its Application, Applicant respectfully requests that the Commission:

1. Approve the Agreement without a hearing; and
2. Grant such other and further relief as the Commission may deem just and proper.



Daniel Trammel
P.O. Box 462
Greer, SC 29652
(864)469-9715
Attorney for Applicant

Greenville County, South Carolina

This 8 day of May, 2013

PUMP STATION AND FORCE MAIN AGREEMENT

entered into on this 19 day of SEPTEMBER, 2012, by and among ASCOT OF GREENVILLE HOMEOWNERS ASSOCIATION, INC., a South Carolina nonprofit membership corporation (the "Association"); CONDOR ENVIRONMENTAL, L.L.C. a South Carolina Limited Liability Company ("Condor"); and METROPOLITAN SEWER SUBDISTRICT, a special purpose district created under the laws of South Carolina ("Metropolitan").

WITNESSETH:

WHEREAS, Ascot Subdivision is a residential subdivision (the "Premises") located in Greenville County, South Carolina; and

WHEREAS, the Association is the governing association for the Ascot Subdivision, and has been organized pursuant to that certain Declaration of Covenants and Restrictions for Ascot, dated July 27, 1999, recorded in the Office of the Register of Deeds of Greenville County, in Deed Book 1854, Page 859; and

WHEREAS, the Premises consists of 105 single family houses serviced by a Pump Station and Force Main; and

WHEREAS, the Ascot Homeowners Association, Inc., Pulte Homes of South Carolina, Inc., and Condor Environmental, Inc. entered into a Pump Station Agreement in 1999 to provide Pump Station operation and maintenance to the Premises; and

WHEREAS, sanitary sewer collection service is provided to the Premises by Metropolitan although Metropolitan did not sign the Pump Station Agreement due in part to the Pump Station Agreement's failure to address the Force Main; and

WHEREAS, Condor Environmental, Inc. agreed to assume the ownership, operation and maintenance responsibility for the Pump Station and Force Main located on the Premises that was deeded over to Condor Environmental, Inc. on October 27, 1999 and filed in Deed Book 1875 at Page 685; and

WHEREAS, the Public Service Commission approved the Pump Station Agreement on August 10, 2000 and the Ascot Homeowners Association, Inc., Pulte Homes of South Carolina, Inc. and Condor Environmental, Inc. have honored the terms of the Pump Station Agreement since that time; and

WHEREAS, Condor Environmental, Inc. transferred its regulated wastewater utility status to Condor Environmental, LLC on April 15, 2008; and

WHEREAS, this Agreement replaces all other agreements.

NOW, THEREFORE, for and in consideration of the foregoing premises and the mutual covenants of the parties herein set forth, the parties hereto hereby agree as follows:

1. OPERATION OF PUMP STATION AND FORCE MAIN. Condor shall operate and maintain the Pump Station and Force Main so that all houses within the Ascot Subdivision served by the Pump Station and Force Main shall receive continuous sanitary sewer service without interruption. The repair, maintenance and replacement responsibilities of Condor under this Agreement shall include the replacement of all parts of the Pump Station and Force Main which shall become worn out or obsolete and the making of all capital repairs and replacements as shall be necessary in order for Condor to carry out its obligations under this Agreement without interruption.

It is anticipated that the wastewater collected from the Premises and delivered to the Pump Station and Force Main consists only of wastewater of typical residential strength waste. The Association shall be responsible for and shall ensure, to the extent reasonable, that the sewage collected from the Ascot Subdivision and delivered to the Condor Pump Station consists only of wastewater of typical residential strength waste, which shall not exceed a monthly average of 300 ppm BOD or TSS, and does not contain sediment, excessive grease, rags or other deleterious substances. If Condor believes that sediment, excessive grease, rags or other deleterious substances are being flushed within the Ascot Subdivision, Condor shall give the Association written notice and sufficient documentation of said substances. Condor may require the Association, and the Association agrees, to take reasonable response actions to correct the discharge of sewage from the Ascot Subdivision where the contaminant level or waste concentration of this sewage exceeds the level described herein. Additionally, if Condor determines that there is excessive infiltration and inflow ("I/I") into the Pump Station from the collection system in the Ascot Subdivision, then Condor may require, and Metropolitan and the Association shall take, reasonable response actions to correct the excessive I/I.

Condor shall operate and maintain the Pump Station and Force Main so that the same will at all times comply with and fulfill all governmental laws, rules and regulations that shall be applicable to the operation and maintenance of the Pump Station and Force Main. Without limiting the generality of the foregoing, Condor shall operate and maintain the Pump Station and Force Main in accordance with all rules and regulations which shall be promulgated at any time, and from time to time, by Metropolitan for privately owned and maintained sanitary sewer Pump Stations and Force Mains which are part of the sewage collection system operated by Metropolitan. In addition, Condor shall comply with all policies and requirements of the South Carolina Public Service Commission or other appropriate governmental agencies which may be

applicable to the Pump Station and Force Main. Condor shall be solely responsible for the payment of all costs and expenses which it shall incur in connection with the carrying out of its duties and responsibilities under this Agreement, unless otherwise specified herein.

2. PAYMENT BY THE ASSOCIATION. The Association hereby agrees that in consideration for the performance by Condor of its duties and obligations under this Agreement, the Association shall pay to Condor the amount of Two thousand thirty dollars and fifty-six cents (\$2,030.56) (the "Monthly Fee") per month.

Upon execution of this Agreement, the Association shall deliver to Condor an irrevocable letter of credit from a bank located in Greenville County, South Carolina in the amount of ten thousand dollars (\$10,000.00) to guarantee the payment by the Association of the Monthly Fee to Condor in accordance with the terms hereinafter.

The Association shall pay the Monthly Fee to Condor on or before the tenth day of each calendar month by means of a check made payable to Condor and mailed or otherwise delivered to the address herein below provided. In the event that the Association shall at any time fail to pay to Condor the Monthly Fee within thirty (30) days of the due date, Condor shall have the right to draw the Monthly Fee plus ten percent (10%) of the Monthly Fee as a delinquency charge from the Association's Letter of Credit. Condor shall at all times be responsible for the continued performance of its duties and obligations under this Agreement.

Upon no less than ninety (90) days prior notice to the Association, Condor shall have the right to increase the amount of the Monthly Fee at any time, in order to compensate Condor for any reasonable increase in the cost and expense to Condor of performing its responsibilities under this Agreement, provided that such increase shall be approved in advance by the South Carolina Public Service Commission and further provided that the increase in the Monthly Fee shall not be increased by more than three (3%) percent in any twelve month period. Notwithstanding the forgoing, Condor shall not increase the amount of the Monthly Fee because of any fine or penalty assessed by any regulatory agency to Condor for any act or omission by Condor or for repairs or replacements to the Premises, including the Pump Station and Force Main, that are the result of the negligent or intentional acts or omissions of Condor.

Additionally, the Association agrees and is responsible for payment to Condor, in addition to the Monthly Fee, for any reasonable response actions Condor takes to remedy and repair the damage caused by excessive contaminants or other deleterious substances.

3. ASSISTANCE BY METROPOLITAN. If Condor were to default on its responsibilities under this Agreement, to the point that further performance under this Agreement were impracticable or unacceptable, or, if Condor were to go out of business, without establishing a proper successor under this Agreement, then Metropolitan would provide temporary operation and maintenance of the Pump Station and Force Main for a period of up to but not in excess of one hundred eighty (180) days. The Association is responsible for selecting

a qualified private utility to substitute for Condor and obtaining approval for the substitute utility by Metropolitan. In the interim, while Metropolitan is operating and maintaining the Pump Station and Force Main, the Association will pay to Metropolitan the monthly payments that previously were paid to Condor.

4. CONSENT BY METROPOLITAN. Metropolitan hereby consents to the terms of this Agreement and agrees to accept the discharge from the Pump Station.

5. NOTICES. Any notices which may be permitted or required under the terms and provisions of this Agreement shall be in writing and shall be deemed to have been duly given, except as otherwise provided in this Agreement, as of the date and time the same are received by the parties to whom the notices are sent. Such notices shall be deemed received upon hand delivery or by Federal Express or equivalent courier and evidenced by a notation on the records of that courier that such notices were delivered to the parties at the following addresses or at such other address as a party shall notify the other parties in writing:

- (a) Ascot of Greenville Homeowners Association, Inc.
P.O. Box 1827
Greenville, South Carolina 29602
- (b) Condor Environmental, LLC
211 Randall Street
Greer, South Carolina 29651
- (c) Metropolitan Sewer Sub-District
120 Augusta Arbor Way
Greenville, South Carolina 29605

6. TERM. The term of this Agreement shall commence on the date on which this Agreement shall be executed by all parties hereto and shall continue in full force and effect until such time, if any, as Condor shall have transferred and conveyed the Pump Station and Force Main to a governmental subdivision of the State of South Carolina which shall have all power and authority necessary to operate and maintain the Pump Station and Force Main and shall have agreed with the Association to do so. Upon the acceptance of said transfer and conveyance by such a governmental authority, Condor shall be automatically released from all further duties or obligations under the terms of this Agreement.

In addition to the above, this Agreement may terminate in the following ways:

- (a) This Agreement will terminate if a public entity agrees to assume the operation of the Premises;
- (b) If the Pump Station and Force Main is replaced by a gravity sewer line, the Agreement shall terminate effective upon the date that the gravity sewer line

is placed into operation. In such case, Condor will not be responsible for any costs associated with tying into the gravity sewer system and the closure of the Pump Station and Force Main. ~~Additionally, Condor shall transfer any remaining pump station replacement escrow money to the Association on the date that the gravity sewer line is placed into operation;~~

Mr. [unclear]
9/19/12

Mr. [unclear]

(c) Subject to and without limiting paragraph 3 above, if Condor were to default on its responsibilities under this Agreement, to the point that further performance under this Agreement were impracticable or unacceptable, or, if Condor were to go out of business, this Agreement will terminate. If Condor defaults, the Association is responsible for selecting a qualified private utility to substitute for Condor. Once a qualified private utility is selected by the Association and approved by Metropolitan, Condor agrees to immediately transfer and convey the Pump Station and Force Main to said utility at the direction of the Association and Metropolitan, ~~and transfer any remaining pump station replacement escrow money to the designated successor entity.~~

Mr. [unclear]
9/19/12

Mr. [unclear]

(d) Condor may terminate the Agreement upon ninety (90) days prior written notice to the Association, provided that prior to termination Condor has identified for the Association and the Association has selected a successor entity that is properly qualified and licensed to enter into an Agreement substantially similar to this Agreement or into an agreement reasonably satisfactory to the Association to operate the Pump Station and Force Main. Condor shall at all times be responsible for the continued performance of its duties and obligations under this Agreement until the successor entity has assumed the obligations under this Agreement. Upon approval of a successor by Metropolitan, Condor agrees to immediately transfer and convey the Pump Station and Force Main to the designated successor entity, ~~and transfer any remaining pump station replacement escrow money to the successor entity.~~

Mr. [unclear]
9/19/12

Mr. [unclear]

(e) The Association may terminate the Agreement upon thirty (30) days prior written notice to Condor, if inadequate or improper operation or maintenance of the Pump Station or Force Main by Condor causes any of the following conditions: (i) an interruption of service, (ii) a sewage backup, or (iii) a sewage overflow out of the Pump Station or Force Main; and any such condition or combination of conditions occurs more than two times during any rolling twelve (12) month period. However, any occurrence of any of the prior described conditions, caused by an Act of God or by some third party not under the control of Condor, is excused, so long as Condor uses its best efforts to remedy this condition and restore normal sewer service. In the event Condor causes two failure conditions during a twelve month period or otherwise fails to comply with the requirements of this paragraph, the Association has the option, but not the obligation, to require Condor to

MM
9/19/12

WAG

promptly deed the Pump Station and Force Main to a proper successor as selected by the Association and approved by Metropolitan ~~and transfer any remaining pump station replacement escrow money.~~

7. METROPOLITAN APPROVAL. Notwithstanding the foregoing, however, any operation of the Pump Station and Force Main by any person, party, or entity other than Condor, as herein provided, shall be subject to the approval of Metropolitan. Upon the approval of said transfer and conveyance to such a person, party, or entity, Condor shall be automatically released from all further duties or obligations under the terms of this Agreement.

8. HOLD HARMLESS. The Association, Condor, their successors and assigns shall indemnify and hold harmless Metropolitan for any and all damage of any nature which may occur from this Agreement.

9. APPLICATION OF LAWS. This Agreement is governed by the laws of South Carolina.

10. INSURANCE. For the duration of this Agreement, Condor shall keep in full force and effect a policy or policies of public liability, personal and property damage insurance with respect to the Pump Station and Force Main.

11. AMENDMENTS. This Agreement and any provision herein contained may be modified or amended only by the express written consent of all of the parties hereto or their successors or assigns.

12. ASSIGNMENT. Condor may not assign this Agreement to any other party without the express written consent of the Association, its successors or assigns, and Metropolitan. The Association may assign this Agreement to any entity upon written notice to Condor, its successors or assigns.

13. SEVERABILITY. If any provision of this Agreement is, to any extent, declared by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those in respect to which the determination of invalidity or unenforceability was made, will not be affected thereby and each provision of this Agreement will be valid and enforceable to the fullest extent permitted by law.


14. CAPTIONS. The captions of the sections of this Agreement are for convenience only and are not intended to affect the interpretation or construction of the provisions herein contained.

15. BINDING EFFECT. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns.

16. ENTIRE AGREEMENT. This Agreement constitutes the sole and only agreement of the parties hereto and supersedes any prior understanding or written or oral agreements between the parties respecting the within subject matter, and may be amended only by a writing signed by the parties hereto.

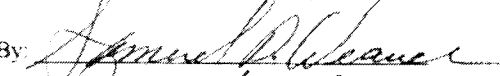
IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year first above written.

THE ASCOT OF GREENVILLE
HOMEOWNERS ASSOCIATION, INC.

By: 

Its: PRESIDENT

CONDOR ENVIRONMENTAL, LLC

By: 

Its: PRESIDENT

METROPOLITAN SEWER SUBDISTRICT

By: 

Its: GENERAL MANAGER